

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 8317 of 2002

Between:

M/s.Annapurna Ice & Cold Storage Plant, Machilipatnam, Rep by its Proprietor
thota Khader Vallindra Babu Rao,
R/o. 5/370, Jawaharpet, Machilipatnam,
Krishna District. S/o. Rajagopal

..... PETITIONER

AND

- 1 The chief Engineer
A.P., TRANSCO,
Vijayawada.
- 2 Superintending Engineer, Assessment,
A.P.Transco., Vijayawada.
- 3 Asst. Divisional Engineer, Operations
A.P.Transco., Machilipatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction, declaring the impugned orders passed by the 1st respondent vide appeal vide proceedings No.CEE/VZ/VJZ/MRT/AE/V4/98 D. No.173 dt.31.7.1998 and consequently declare the demand for minimum charges without power supply to an extent of Rs.3,11,513/- dt/21.2.2002 in the month of January 2002 as illegal, arbitrary and without jurisdiction and pass appropriate orders.

Counsel for the Petitioner :MR. C. NAGESWARA RAO

Counsel for the Respondents: V.AJAY KUMAR, SC for APTRANSCO

The Court made the following :

ORAL ORDER:

This writ petition is filed questioning the orders dated 31.7.1998 vide proceedings No. CEE/VZ/VJA/MRT/AE/V4/98 D.No.173/98, issued by the appellate authority-Chief Engineer, Electricity, Vijayawada Zone, Vijayawada, as per the terms and conditions of supply, framed under the Electricity (Supply) Act.

The petitioner is a consumer of power supply for running an Ice and Cold Storage plant. His premises was inspected by the Assistant Divisional Engineer, Vijayawada, on 13.8.1996 and during the inspection, it was found that the petitioner-consumer has connected load to the tune of 85.5 HP, i.e., more than the sanctioned capacity of 70.75 HP. Further, it was found that the meter box seal bearing SI.No.162596 was found tampered. In that view of the matter, proceedings were initiated for malpractice and, ultimately, final assessment was made, assessing the loss sustained, on account of pilferage, to the tune of Rs.2,38,528/-. As against the same, the petitioner preferred appeal to the Chief Engineer, who by the impugned order dated 31.7.1998 passed orders revising the assessment made by the Superintending Engineer, Assessments, Vijayawada, modifying the value of energy pilfered to Rs.59,378/-.

In this writ petition, it is submitted by the learned counsel for the petitioner

that, as much as, on the similar set of allegations, criminal proceedings were initiated against the petitioner and the competent court acquitted the petitioner from the charges levelled in C.C.No.212 of 1997, in that view of the matter, the order of the appellate authority is illegal. Further, it is submitted that the petitioner has connected only the sanctioned load and the allegations made against him are false and incorrect.

On the other hand, it is submitted by Mr. V. Ajay Kumar, learned Standing Counsel for the A.P. TRANSCO that, merely because the petitioner was acquitted in the criminal proceedings, the same is no ground to upset the order passed by the assessing authority, as modified by the appellate authority. It is further submitted that the consumer has utilized the energy by exceeding the sanctioned load and the same is malpractice, as per the terms and conditions of supply.

With reference to the above submissions, in this case, it is to be seen that, the inspection was made by the Assistant Divisional Engineer on 13.8.1996. From the inspection, it was found that the petitioner, who is a consumer, has connected the load to the tune of 85.5 HP, which is more than the sanctioned load, and further by giving opportunity, enquiry was conducted, and though initially, provisional assessment was made to the tune of Rs.6,81,411/-, but, however, the Superintending Engineer himself has assessed the loss to the tune of Rs.2,38,528/- only. However, on fling appeal, the further loss, on account of pilferage, is revised to Rs.59,378/-. The assessment was made duly conducting enquiry with reference to physical inspection done by the Assistant Divisional Engineer. In that view of the matter, the allegation of the petitioner that he has not connected to the excess load, than sanctioned, cannot be accepted. Further, the acquittal of the petitioner in criminal proceedings, by itself, cannot be the ground to annul the orders passed by the assessing authority. In a judgment reported in case of J.M.D. ALLOYS LTD V. BIHAR STATE ELECTRICITY BOARD AND OTHERS (¹), the Apex Court has held

that the trial in the criminal proceedings has no bearing in the assessment order under the tariff of the value of the electricity stolen. In that view of the matter, the submissions made by the learned counsel for the petitioner cannot be accepted. Moreover, the appellate authority also examined the issue in detail and recorded its finding. Therefore, I do not find any merit in this writ petition to interfere with the orders of the appellate authority dated 31.7.1998.

The writ petition is devoid of merits and the same is accordingly dismissed. However, it is to be observed that the amounts, paid pursuant to the interim orders, have to be adjusted in terms of the order passed by the appellate authority. No order as to costs.

5.7.2005

CVM

To,

1. 1 The chief Engineer
A.P., TRANSCO,
Vijayawada.
- 2 Superintending Engineer, Assessment,
A.P.Transco., Vijayawada.
- 3 Asst. Divisional Engineer, Operations
A.P.Transco., Machilipatnam.
4. 2 CD copies.

